

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT WHITTEN, *et al.*,

Plaintiffs

v.

C-1-11-889

FENNER DUNLOP CONVEYOR
SYSTEMS AND SERVICES, INC.,

Defendant

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 52), plaintiffs' objections (doc. no. 54) and defendant's response (doc. no. 55). The Magistrate Judge recommends defendant is entitled to judgment as a matter of law with respect to plaintiffs' disability discrimination claims and plaintiffs' wrongful termination claims, therefore, defendant's Motion for Summary Judgment (doc. no. 40) should be GRANTED and this case terminated on the active docket of the Court.

Plaintiffs object to the Magistrate Judge's conclusions that the evidence clearly established plaintiffs were terminated by defendant because, while working at CONSOL's Blackville mine, they complained to defendant's customer's mine escort regarding their job and the customer's shortcomings, their confrontations with its foreman and causing friction between defendant's employees and defendant's customer's employees, all in violation of their duties to act professionally as outlined in their job descriptions. Plaintiffs argue the Magistrate Judge, in so finding, ignored the evidence that plaintiffs were removed from the mine because of the substance of their complaints to defendant about the long shift and associated delays, as well as their refusal to work more than 16 hours.

Defendants argue that plaintiffs cannot present a genuine issue of material fact on either their disability discrimination claims or their wrongful discharge in violation of public policy claims, therefore, the Magistrate Judge's Report and Recommendation should be adopted and defendant's Motion for Summary Judgment should be granted.

CONCLUSION

Upon a *de novo* review of the record, this Court finds that plaintiffs have abandoned their disability discrimination claims and agrees with the Magistrate Judge that plaintiffs' conduct, in the presence of the escort assigned to their work area by CONSOL mine and toward CONSOL's mine foreman, was unprofessional and tarnished Fenner's relationship with CONSOL, their largest customer. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Magistrate Judge. The Court finds that plaintiff's objections have either been adequately addressed by the Magistrate Judge or present no particularized arguments that warrant further specific responses by this Court.

Accordingly, the Court hereby ADOPTS AND INCORPORATES BY REFERENCE HEREIN the Report and Recommendation of the United States Magistrate Judge (doc. no. 52). Defendant's Motion for Summary Judgment (doc. no. 40) is GRANTED. This case is DISMISSED AND TERMINATED on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court